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7 DELMER CAMP, et al.,
8 Plaintiffs,
9 v.
10 HOME DEPOT U.S.A. INC.,
11 Defendant.

12 Case No. 19-cv-02240-RS
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**ORDER GRANTING MOTION TO
REMAND AND DENYING MOTION
FOR ATTORNEYS' FEES**

15 **I. INTRODUCTION**

16 Plaintiffs Delmer Camp and Adriana Correa filed this putative class action in the Superior
17 Court of California, Santa Clara. The operative complaint asserts state law claims against
18 Defendant Home Depot U.S.A. Inc. (“Home Depot”). Home Depot removed the action to the
19 Northern District of California pursuant to the Class Action Fairness Act (“CAFA”), contending
20 that the amount in controversy can be reasonably estimated to exceed the \$5 million threshold for
21 jurisdiction under CAFA. *See* 28 U.S.C. § 1332(d)(2). Plaintiffs seek remand to the Superior Court
22 of California and request an award of attorneys’ fees. For the reasons explained below, Plaintiffs’
23 motion to remand is granted and their motion for attorneys’ fees is denied.

24 **II. LEGAL STANDARD**

25 Under CAFA, 28 U.S.C. § 1332(d), federal courts have original jurisdiction over class
26 actions where there are at least 100 class members, at least one plaintiff is diverse in citizenship
27 from any defendant, and the amount in controversy exceeds \$5,000,000, exclusive of interest and
28 costs. *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015). A class action

1 that meets CAFA standards may be removed to federal court. 28 U.S.C. § 1441(a). By enacting
2 CAFA, Congress intended to ease the ability of defendants to remove certain class or mass actions
3 to federal court. Accordingly, “a defendant’s notice of removal need include only a plausible
4 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*
5 *Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014). Evidentiary submissions supporting
6 the grounds for removal are not required.

7 When evaluating a challenge to CAFA jurisdiction, courts looks first to the allegations in
8 the complaint. In general, “the sum claimed by the plaintiff controls if the claim is apparently
9 made in good faith.” *Ibarra*, 775 F.3d at 1197 (quoting *St. Paul Mercury Indem. Co. v. Red Cab*
10 Co., 303 U.S. 283, 289 (1938)). If however, “damages are unstated in a complaint, or, in the
11 defendant’s view are understated, the defendant seeking removal bears the burden to show by a
12 preponderance of the evidence that the aggregate amount in controversy exceeds \$5 million when
13 federal jurisdiction is challenged.” *Id.* When a defendant’s amount in controversy estimate is
14 contested by plaintiffs, “both sides submit proof and the court decides, by a preponderance of the
15 evidence, whether the amount-in-controversy requirement has been satisfied.” *Id.* (quoting *Dart*,
16 135 S. Ct. at 554).

17 III. DISCUSSION

18 A. Motion to Remand

19 The parties’ sole dispute is whether CAFA’s \$5 million amount in controversy requirement
20 is met. In its Notice of Removal, Home Depot contended the amount in controversy is over \$8.5
21 million. In its Opposition, the company increased the estimated amount in controversy to \$10.2
22 million. This estimate is based on the fact that “122,070 employees had one or more pay periods
23 where the total recorded clock hours for that pay period was greater than total rounded hours.”
24 Anderson Decl. at ¶ 6. Plaintiffs, for their part, argue the amount in controversy is below \$5
25 million and accuse Home Depot of improperly redefining the scope of the proposed class in order
26 to satisfy the amount in controversy requirement.

27 The Complaint defines the class as:

1 **All person[s] current or formerly employed by Defendant HOME
2 DEPOT U.S.A., Inc.,** in hourly-paid positions within the State of
3 California at any time on or after the date four years prior to the filing
4 of the initial Complaint in this matter and **whose aggregate work time
5 for purposes of calculating payroll was lower after application of
6 time rounding** by Defendant HOME DEPOT U.S.A., Inc.’s
7 timekeeping systems than the aggregate work time captured by the
8 timekeeping system before applying rounding to daily total time
9 worked.

10 Compl. ¶ 17 (emphasis added). Plaintiffs estimate this class amounts to “over 60,000 Associates
11 employed by Home Depot” who have been paid for less time than was captured by the
12 timekeeping system. *Id.* ¶ 13.

13 Home Depot responds with several arguments. First, Home Depot argues Plaintiffs’
14 current characterization of the class is inconsistent with the allegations in the Complaint.
15 Specifically, because the Complaint alleges claims for unpaid daily and weekly overtime, the class
16 should be interpreted to include employees who were underpaid *in at least one pay period* even if
17 those employees were not underpaid in the aggregate. *See id.* ¶ 30 (alleged violation of Labor
18 Code § 1197 referring to “all hours worked during a payroll period”); *id* ¶ 33 (alleged violation of
19 Labor Code § 510 referring to overtime wage calculation for both work days and work weeks); *id*
20 ¶ 40 (arguing all time should be rounded up).

21 The Complaint, however, defines the class in plain language to include only those
22 employees who were underpaid in the “aggregate” during the class period. *See id.* ¶ 17.
23 “Aggregate” refers to *total* underpayment of class members over the class period, as opposed to
24 Home Depot’s calculations based on specific pay periods. Moreover, to the extent there was any
25 ambiguity about the meaning of the term “aggregate” in this context, Plaintiffs have expressly
26 represented that this term refers to the total amount of time worked during the class period, not
27 simply the amount of time worked in a given pay period.

28 Next, Home Depot argues Plaintiffs’ proposed class is improper because “a plaintiff
seeking to represent a putative class [cannot] evade federal jurisdiction by stipulating that the
amount in controversy [falls] below the jurisdictional minimum.” *See Rodriguez v. AT&T Mobility
Servs., LLC*, 728 F.3d 975, 981 (9th Cir. 2013). Indeed, the Supreme Court in *Standard Fire*

1 *Insurance* held that a named plaintiff's assertion that he would seek to recover damages of less
2 than \$5 million did not remove the case from CAFA's scope. *Standard Fire Ins. Co. v. Knowles*,
3 568 U.S. 588, 591-92 (2013). Home Depot characterizes Plaintiffs' definition of the class as an
4 attempt to stipulate that the amount in controversy is certain to be below \$5 million. This
5 argument is unpersuasive. Plaintiffs are not stipulating to any particular amount in controversy.
6 Rather, they are defining the proposed class to include only those employees who were paid for
7 fewer hours than they worked during the relevant period. Accordingly, *Rodriguez* and *Standard*
8 *Fire Insurance* are inapposite.

Finally, Home Depot argues Plaintiffs' proposed class is untenable because it amounts to "strategic pleading." *See Corbin v. Time Warner Entm't-Advance/Newhouse P'ship*, 821 F.3d 1069, 1077 (9th Cir. 2016); *see also Utne v. Home Depot U.S.A., Inc.*, No. 16-cv-01854-RS, 2017 WL 5991863, at *1 (N.D. Cal. Dec. 4, 2017). In *Corbin*, the Ninth Circuit reviewed a summary judgment decision in which an individual plaintiff sued the defendant over its work time rounding policy. *See Corbin*, 821 F.3d at 1077. The court ultimately rejected the plaintiff's argument that the applicable federal rounding regulation required employers to ensure that "every employee gains or breaks even over *every* pay period or set of pay periods." *Id.* The Ninth Circuit went on to explain that such an interpretation would "unfairly reward[] strategic pleading, permitting plaintiffs to selectively edit their relevant employment windows to include only pay periods in which they may have come out behind." *See id.*

In *Utne*, the plaintiff filed a complaint with a similar class definition to Plaintiffs' proposed class here. *Utne*, 2017 WL 5991863, at *1. Home Depot moved for summary judgment, arguing that its rounding practice was neutral because it rounded shift hours to the nearest quarter hour. *Id.* at *3. Expert analysis of Home Depot's records showed that this practice did not systematically undercompensate employees. *Id.* The plaintiff responded that summary judgment should not be granted because plaintiff only sought to certify a class of employees *who were in fact underpaid* in the aggregate. *Id.* at *4. Like the court in *Corbin*, this Court rejected plaintiff's theory for relief as a misreading of the federal rounding regulation and granted summary judgment for the defendant.

1 *Id.*

2 Both the *Corbin* and *Utne* decisions focused on the merits of the plaintiffs' rounding
3 claims. Here, however, the merits of the rounding claim are not at issue. Rather, in measuring the
4 amount in controversy, "a court must assume that the allegations of the complaint are true and *that*
5 *a jury will return a verdict for the plaintiff on all claims made in the complaint.*" *Korn v. Polo*
6 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (emphasis added)
7 (citing *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D.
8 Cal. 2002)).

9 Ultimately, Home Depot cites no authority for the proposition that a defendant may
10 redefine a plaintiff's class based on its impressions of the merits of the class claims. Home
11 Depot's estimates of the amount in controversy were not based on the correct class and therefore
12 cannot satisfy the amount in controversy requirement. Accordingly, the motion to remand is
13 granted.

14 **B. Motion for Attorneys' Fees**

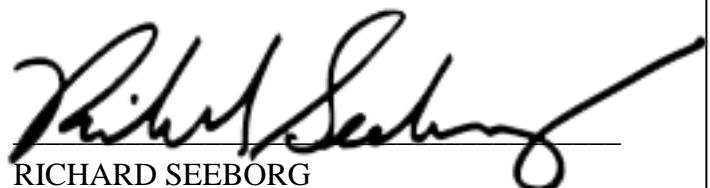
15 Plaintiffs seek an award of attorneys' fees incurred as a result of removal. Attorneys' fees
16 are available under 28 U.S.C. § 1447(c) only "where the removing party lacked an objectively
17 reasonable basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141
18 (2005). Home Depot had an objectively reasonable basis for seeking removal. Accordingly,
19 Plaintiffs' motion for attorneys' fees is denied.

20 **IV. CONCLUSION**

21 For the reasons set forth above, this action is remanded to the Superior Court of California,
22 Santa Clara. Attorneys' fees will not be awarded.

23 **IT IS SO ORDERED.**

24
25 Dated: July 26, 2019


26 RICHARD SEEBORG
27 United States District Judge